PERWIRA HABIB BANK (M) BHD.

v.

PENGKALAN ENTERPRISE SDN. BHD.

HIGH COURT MALAYA, KUALA LUMPUR
LIM BENG CHOON J
[ORIGINATING SUMMONS NO. S7-24-169-90]
29 AUGUST 1991

CONTRACT: *Privity - Rates of interest - Whether unreasonable - Whether compound interest - Contracts Act 1950, s. 75.*

CONTRACT: *Words and conduct - Whether led to induce or belief - Representation of future intention.*

REVENUE LAW: *Stamp duty - Charge documents - Whether understamped - Interest not taken into account - Stamp Act 1949, s. 28.*

On 5 February 1990 the plaintiff applied for an order for sale and incidental reliefs, of the said property which had been charged by the defendants to the plaintiff on 9 September 1983 to secure facilities up to up RM2 million for the building of a multi-storey building on the land. The plaintiff had also offered to end finance the project. The defendants opposed the application, citing several grounds, *inter alia*, that the plaintiff knew of the defendant's proposal to develop the property in collaboration with SK and that the plaintiff was a party to negotiations between the defendant and SK. The defendant therefore alleged that the plaintiff was estopped from proceeding with the foreclosure action. The defendant also alleged that the charge was void or voidable because of understamping as the stamp duty on the charge was only up to RM2 million whereas when interest was capitalised, the sum exceeded RM2 million. Further it was contended that the plaintiff had charged compound interest which violated s. 75 of the Contracts Act 1950. The plaintiff denied that they were privy to the contract between the defendant and SK. They also denied that there was any understamping of the charge documents.

Held:

[1] The defendant could not ground estoppel on the end-financing agreement as it is clear that the defendant did not rely on the end-financing agreement in carrying out the project with SK. The plaintiff was assisting the defendant and not inducing them to carry out the project. That being so, it could not be said that the plaintiff had by words or conduct led or induced the defendants to believe that the plaintiff would not enforce their rights under the charge over the land.

[2] In any case, the letter of undertaking granted by the plaintiff to SK, on which the defendant grounded an estoppel, was not unconditional. It was issued subject to four conditions and did not amount to a clear and unambiguous statement to pay the construction costs in any event. The defendant could not be allowed in law to ground estoppel on such a letter of undertaking.

[3] The defendant also could not ground estoppel on this letter of undertaking because the representation contained therein is not a representation of an existing fact but a representation of future intention which might or might not be enforceable in contract. The default of SK in completing the project was a breach of a fundamental term and rendered the letter of

undertaking unenforceable against the plaintiff contractually. Therefore, the agreement between the plaintiff with the defendant whereby the plaintiff agreed to end-finance the project also became nugatory as there would not be any end-purchasers.

[4] The charge was not understamped as stamp duty was only chargeable on the original loan amount of RM2 million. (*UMBC v. Pekeliling Triangle* [1991] 1 CLJ (Rep) 474 followed).

[5] Pursuant to Clauses 4 and 5 of the charge annexure the capitalisation of interest was intended to be part of the contract creating the charge between the parties. Considering that the rate of the capitalisation interest is the same as the prescribed rate of interest it cannot be said to be unconscionable or unreasonable and s. 75 of the Contracts Act 1950 is not applicable.

[Judgment for the plaintiff with costs.]

Cases referred to:

Hughes v. Metropolitan Railway Co. [1887] 2 AC 439 ***(foll)***
Sim Siok Eng v. Government of Malaysia [1978] 1 MLJ 15 ***(foll)***
Dawsons Bank Ltd. v. Nippon Menkwa Kabushihi Kaish (Japan Cotton Trading Co. Ltd.) [1935] AIR PC 79 ***(foll)***
V. Veeriah v. General Manager, Keretapi Tanah Melayu [1974] 1 MLJ 201 ***(cit)***
United Malayan Banking Corporation Bhd. v. Pekeliling Triangle Sdn. Bhd. [1991] 1 CLJ (Rep) 474 ***(foll)***
Kurella Ramamurti v. Nalam Subbarao [1939] AIR Madras 481 ***(cons)***
M/s. Jyoti Cold Stores v. P.F. Corporation [1973] AIR P & H 38 ***(foll)***

Legislation referred to:

Contracts Act 1950, ss. 74, 75
National Land Code 1965, Form 16D

For the plaintiff - Ng Leong Huat; M/s. Skrine & Co.
For the defendant - Shahul Hameed Amiruddin; M/s. Sri Ram & Co.

JUDGMENT

Lim Beng Choon J:

On 5 February 1990 the plaintiff applied by way of this originating summons for an order that the whole of the land held under C.T. No. 20074 Lot No. 344 Section 83 Bandar Kuala Lumpur, Wilayah Persekutuan (hereinafter referred to as "the disputed land") registered in the name of the defendant and charged to the plaintiff under the terms of a charge dated 8 September 1983 by charge presentation no. 14406/83 Jilid 318 Folio 136 and registered by the Registrar of Titles Wilayah Persekutuan on 9 September 1983 be sold by public auction. The plaintiff also prayed for the incidental reliefs that the said auction be held on a date to be fixed by the Court and that it be carried out by the officials of the Court subject to the directions of the Senior Assistant Registrar. The proceeds of the sale were to be applied to pay all costs and expenses of and incidental to the sale by auction and the remaining proceeds of the sale were to be applied to repay the loan plus interests owed by the defendant to the plaintiff. The plaintiff's application was supported by an affidavit affirmed by its manager (encl. 2) on 15 February 1990 in which the deponent pointed out to the Court the more material provisions contained in several clauses of the charge annexure and the demand made by the plaintiff to the defendant to repay the loan sum of RM2,296,364.72 being the amount owing by the defendant to the plaintiff as at 30 September 1989 together with interest on the sum within the limit of RM1,600,000 at the rate of 4.25% per annum above the plaintiff's

base lending rate and on the sum in excess of RM1.6 million at the rate of 4 % per annum above the plaintiff's base lending rate from 1 October 1989 to the date of final payment to be made within 7 days from the date thereof. The defendant failed to comply with the demand of the plaintiff and the latter thereafter through its solicitors sent the statutory notice of demand in Form 16D of the National Land Code ("the NLC"). Again the defendant had failed to comply with the said Form 16D and had thereby defaulted. Hence the institution of this action by the plaintiff.

After filing its memorandum of appearance on 22 February 1990 the defendant through its director one Akau @ Lim Chong Yee ("Akau") affirmed an affidavit on 16 June 1990 (encl. 6) to oppose the present application of the plaintiff. The grounds relied on by the defendant to oppose the present application of the plaintiff can be summarised in three parts.

Firstly Akau asserted that at all material times to this action the plaintiff knew of the defendant's intention to:

(a) erect a multi-storey building on all the land in dispute.

(b) sub-divide such building and to secure strata titles; and

(c) sell such subdivided lots to end-buyers.

The plaintiff was fully aware that the repayment of the said loan would be from the proceeds of the sale of sub-divided lots and to which the plaintiff agreed to provide end-financing to ultimate purchasers. The offer of the plaintiff for end-financing was contained in an undated letter written by the plaintiff to the defendant who received it on 7 July 1984 (see Exhibit "LCY1" annexed to encl. 6). In complete reliance of the terms contained in the said letter (exhibit "LCY1"), the defendant appointed Sato Kogyo Company Limited to construct the said multi-storey building on the disputed land on a turn-key basis. Futhermore the plaintiff did by letter of undertaking dated 12 October 1984 undertake to pay Sato Kogyo Company Limited the sum of RM33,880,000 from the proceeds of the sale of all units in the project. However the said Sato Kogyo Company Limited did not complete the building in accordance with the building plans as there was a fundamental defect in the nature and character of the construction and no strata titles could be issued under the provisions of the Strata Titles Act 1985. Arising out of the above there was an arbitration pending between the said Sato Kogyo Company Limited and the defendant. The plaintiff was and still is fully aware of the situation and was a party to the negotiations between the defendant and the said Sato Kogyo Company Limited. It was therefore alleged that the plaintiff's claim was pre-mature and/or the plaintiff was estopped from proceeding with the foreclosure proceedings.

Secondly the defendant suggested that the relevant charge was void or voidable and in any event inadmissible evidence as it had been grossly under-stamped - the charge was only stamped for the payment of stamp duty up to the sum of RM2 million only. Hence where the charge annexure provided for the capitalisation of interest, which exceeded the capital sum of RM2 million, the charge documents were insufficiently stamped.

Thirdly it was alleged that even though there was a provision for the plaintiff to vary the interest rate it was a collateral term to the agreement and the plaintiff should act reasonably. Despite protest by the defendant the plaintiff had arbitrarily and unilaterally imposed unreasonable rates of interest which when viewed with the capitalisation clause amount to compounded interest.

In response to the affidavit of the defendant, the plaintiff through its manager affirmed a further affidavit on 17 August 1990 (encl. 15). The averments stated therein may be

summarised as follows. The plaintiff did agree in principle to consider individual applications on a case to case basis to end-finance the ultimate purchasers not exceeding the limit of RM33,880,000 but the plaintiff had not at any time received any application from any ultimate purchaser for credit facilities.

The plaintiff was at all material times and still is not privy to the contract between the defendant and Sato Kogyo Company Limited. As regards to the allegation of understamping the charge, it was contended that as the charge was expressed to be limited to the sum of RM2 million together with interest and other bank charges (as set out in the terms of the annexure to the charge) it was in order for the charge instrument to be stamped for the sum of only RM2 million.

The deponent of the further affidavit encl. 15 then produced and marked as Exhibits 'B1' and 'B2' the true and correct copies of a letter from the defendant to the plaintiff and a letter from the plaintiff to Sato Kogyo Company Limited respectively both letters dated 12 October 1984 to show the circumstances and conditions which the undertaking was given by the plaintiff to Sato Kogyo Company Limited. I shall have more to say about the contents of these two letters presently.

It was further confirmed that as at 27 August 1990 the defendant was indebted to the plaintiff in the sum of RM2,560,312.07. There after further interest would continue to accrue as the specified rates mentioned in the said affidavit.

From the assertion made by the defendant in the affidavit of Akau (encl. 6) and the submission of Counsel, it would appear to me that the issues raised by the defendant are these:

(1) Under the circumstances of the case is the claim of the plaintiff premature and/or is the plaintiff estopped from proceeding with the foreclosure proceeding?

(2) Is the charge void or voidable as it has been grossly understamped?

(3) Is the interest rate imposed by the plaintiff so unreasonable that it amounts to compounded interest and/or in violation of s. 74 of the Contract Act 1950.

Before I consider the three aforementioned issues, it is appropriate for me to highlight some of the undisputed facts. First of all the disputed land was charged to the plaintiff on 9 September 1983 to secure banking facilities up to the amount of RM2 million in order to enable the defendant to erect a multi-storey building on the disputed land ("the project") and nothing was said in the annexure to the charge instrument that the loan was for end-financing of the project. Secondly by an undated letter which the defendant received on 7 July 1984 (10 months after the registration of the charge) the plaintiff agreed in principle to consider individual applications for a loan to purchase an apartment on a case to case basis up to a end-finance limit of RM33,880,000 based on the terms as set out in the undated letter (see Exhibit 'LCY1' annexed to the affidavit of the defendant (encl. 6). Thirdly apparently there was negotiation carried out between the plaintiff and the defendant thereafter and as a result of the negotiation the plaintiff agreed to give a letter of undertaking for the total amount of the construction cost of the project to Sato Kogyo Company Limited subject to the following conditions (see the letter of undertaking dated 12 October 1984 annexed to the further affidavit of the plaintiff encl. 15):

(1) this project **must** be completed by 31 August 1986.

(2) The total amount of the construction cost of RM33,880,000 Ringgit: Thirty-three Million Eight Hundred and Eighty Thousand only shall be paid **one year after the issuance of the Temporary Certificate of Fitness** (that is 31 August 1987 on the above project as a whole).

(3) Any other condition stipulated in the contract between Sato Kogyo Company Limited and Pengkalan Enterprise Sdn. Bhd. **that has a bearing towards the completion of the** project is to apply.

(4) A letter of undertaking from Pengkalan Enterprise Sdn. Bhd. to Perwira Habib Bank (M) Bhd. reference no. WFT/2135-84 dated 12 October 1984 authorising the settlement of the construction cost is attached as appendix I and forms an **integral part of** this letter of undertaking. (Emphasis is mine).

The letter of undertaking of the defendant (see Exhibit 'B1' annexed to the plaintiff's affidavit encl. 15) mentioned in the aforementioned letter was given to the plaintiff in consideration of the plaintiff's issuance of its letter of undertaking to Sato Kogyo Company Limited and containing the following terms:

(1) to undertake to place all proceeds of sale of those financed by Perwira Habib Bank and not those under Perwira Habib Bank's end-finance as fixed deposit under lien to you.

(2) To authorise you to retain all end-finance proceeds from units financed by Perwira Habib Bank in the form of fixed deposit under the lien to you and

(3) To authorise you to remit the said funds not exceeding RM33,880,000 to M/s. Sato Kogyo Company Limited one year after the issuance of temporary CF to the building as whole.

(4) The rate of interest shall be the rates prevailing at the time of fixed deposit emplacement.

(5) This undertaking is to remain in effect up to the date that the funds are remitted to Sato Kogyo.

Quite apart from the aforementioned three undisputed facts, I must, in the absence of any denial by the plaintiff accept as true the assertions of the defendant relating to the facts as set out in its affidavit (encl. 6) with one exception namely the assertion of the defendant that "In complete reliance of the terms contained in the letter of the plaintiff Exhibited as 'LCY1' (annexed to encl. 6), the defendant appointed Sato Kogyo Company Limited to construct the said multi-storey building on the disputed land on a turn-key basis." I cannot accept this assertion of the defendant as true simply because it is inconsistent with the evidence adduced in the present case and I say so for these reasons. In the first place there is no evidence to establish that the plaintiff had any say in the construction of the multi-storey building. Indeed it was not the business of the plaintiff to do so. How the project was to be carried out and the appointment of the contractor to do so was entirely the business of the defendant. In the second place the defendant, after having charged the disputed land to the plaintiff for banking facilities up to the limit of RM2 million, had to appoint a contractor to carry out the project and it selected Sato Kogyo Company Limited to be the contractor. However this company quoted the costs of carrying out the project on a turn-key basis in the sum of RM33,880,000 and obviously this company would want some sort of security to ensure that they would be paid upon completion of the project. Placed in such a situation, the defendant had no choice but to revert to the plaintiff to grant the security requested by Sato Kogyo Company Limited. Needless to say that the plaintiff as a bank would never grant such a security unless it could be ensured that it was to its advantage to grant the security to the said company. To essure the plaintiff that it would not lose out in granting the security to Sato Kogyo Company Limited the defendant thereupon proposed to the plaintiff to undertake the end-financing to ultimate purchasers of the apartments in the

multi-storey building and agreed to deposit all payments made by the ultimate purchasers in a fixed deposit account in favour of the plaintiff who would have a lien of all the moneys deposited therein. Hence the defendant gave its undertaking by letter dated 12 October 1984 exhibited as 'B-1' to encl. 15 which I have reproduced above. In return the defendant thereafter gave its letter of undertaking Exhibit 'B-2' annexed to encl. 15 to Sato Kogyo Company Limited which again I have reproduced earlier. It is therefore not true that the defendant relied on the letter of undertaking given by the plaintiff to appoint Sato Kogyo Company Limited to carry out the project but rather the other way round namely that it was the defendant who moved the plaintiff to accept the end-financing to the ultimate purchasers and offered to allow the plaintiff to have a lien over all payments made by the ultimate purchasers as an incentive to the plaintiff to grant the security sought by Sato Kogyo Company Limited. I made this observation at this stage because it is an important factor (as can be seen later) in my consideration of the issue of estoppel raised by the defendant.

Reverting to the issue (1) raised by the defendant, I accept the fact that in granting the banking facilities to the defendant the former knew that the defendant required loans from the plaintiff up to a limit of RM2 million in order to carry out the project and ultimately to sell the sub-divided lots in the multi-storey building with strata titles to end-buyers. Indeed the plaintiff in its affidavit had not denied that it had knowledge of the defendant's intention in applying for banking facilities. I also accept the fact that by providing the end-financing the plaintiff agreed that the repayment of the loans obtained from the banking facilities granted by the plaintiff would be from the proceeds of the sale of the sub-divided lots to ultimate purchasers. If based on these facts alone and no others I would have held that the claim of the plaintiff is premature and/or the plaintiff is estopped from proceeding with the foreclosure proceeding. If an authority is necessary I would cite the principle stated by Lord Cairns in *Hughes v. Metropolitan Railway Co.* [1887] 2 App. Cas. 439 at p. 448 in these words:

> .. it is the first principle upon which all Courts of equity proceed, that if parties who have entered into definite and distinct terms involving certain legal results - certain penalties or legal forfeiture - afterwards by their own act or with their own consent enter upon a course of negotiation which has the effect of leading one of the parties to suppose that the strict rights arising under the contract will not be enforced, or will be kept in suspense, or held in abeyance, the person who otherwise might have enforced those rights will not be allowed to enforce them where it would be inequitable having regard to the dealings which have thus taken place between the parties.

The principle stated by Lord Cairns was cited with approval by our then Federal Court in *Sim Siok Eng v. Government of Malaysia* [1978] 1 MLJ 15 at 20 where Lee Hun Hoe CJ Borneo (as he then was) said:

> The equitable principle enunciated by Lord Cairns in *Hughes's* case appears to be akin to the doctrine of estoppel and covers promises as well as statements of fact. It has been described as "promissory estoppel" in contrast to an estoppel founded upon a misrepresentation of fact. That principle was discussed in *Tool Metal Manufacturing Co. Ltd. v. Tungsten Electric Co. Ltd.* which was cited and dealt with by the learned Judge.

The matter however does not end here for I am satisfied that the defendant could not ground estoppel on the end-financing agreement and I say so for these reasons. As I have said earlier it is clear that the defendant did not rely on the end-financing agreement in carrying out the project and I need not repeat the reasons for stating so as I have dealt with this aspect of the case at some length in the earlier part of this judgment. All I need to say here is that it was the defendant who moved the plaintiff to enter into the end-financing agreement

in order that it could get the plaintiff to give security in respect of the costs of completing the project in the sum of RM33,880,000 to Sato Kogyo Company Limited. Without the security which the plaintiff subsequently gave in the form of the letter of undertaking the project would not even have got off the ground! It is therefore a case of the plaintiff assisting the defendant and not, I repeat, not inducing it to carry out the project. That being the case surely it cannot be said that the plaintiff had by words or conduct led or induced the defendant to believe that it, the plaintiff, would not enforce its rights under the charge over the disputed land.

Apart from what has been discussed above, it must also be noted that the letter of undertaking granted by the plaintiff to Sato Kogyo Company Limited, on which the defendant grounded an estoppel, is not unconditional in the sense that it guaranteed payment of the sum of RM33,880,000 regardless of what might happen. The said letter is subject to four conditions namely:

(i) the project **must** be completed by 31 August 1986

(ii) the total amount of construction cost of RM33,880,000 would be paid only one year after the issuance of the temporary Certificate of Fitness that is 31 August 1987

(iii) any other condition stipulated in the contract between Sato Kogyo Company Limited and the defendant that had **a bearing towards completion of the project** were to apply and

(iv) the letter of undertaking of the defendant regarding payment of the construction cost one year after the issuance of temporary C.F. formed an integral part of the plaintiff's letter of undertaking. Thus the letter of undertaking of the plaintiff does not amount to a clear and unambiguous statement to pay the construction costs in any event and the defendant is not allowed in law to ground estoppel on such a letter of undertaking. Thus it is said by the Privy Council in *Dawsons Bank Ltd. v.Nippon Menkwa Kabushihi Kaish* (Japan Cotton Trading Co. Ltd.) [1935] AIR PC 79:

> A statement to ground estoppel must be clear and unambiguous: 3 Ch. 82(1). But even if their Lordships were to accept the meaning attributed to the letters O.K. by the plaintiffs and the High Court, it would be impossible to hold that they constitute a representation which could ground an estoppel; for the meaning so attributed is not a representation of an existing fact but a representation of a future intention, which might or might not beenforceable in contract.

Applying the principle laid down in the *Dawsons Bank Ltd.* case to the case before me, likewise the defendant could not ground estoppel on the letter of undertaking given by the plaintiff to Sato Kogyo Company Ltd. simply because the representation contained in the said letter is not a representation of existing fact but a representation of future intention which might or might not be enforceable in contract. Bearing in mind that Sato Kogyo Company Limited failed to complete the project in accordance with the specifications which caused the Bandar Raya to refuse to issue the Certificate of Fitness thereby disabling the defendant from subdividing the lots in the multi-storey building for the purpose of getting strata titles Sato Kogyo Company Limited, is clearly in breach of the fundamental terms of the letter of undertaking which specified that the project must be completed by 31 August 1986 and that payment of the sum of RM33,880,000 was to be made a year after the completion of the project.

The default on the part of Sato Kogyo Company Limited rendered the letter of undertaking unenforceable against the plaintiff contractually. That being the case the agreement entered into by the plaintiff with the defendant whereby the former agreed to the end-financing of the project has also become nugatory as there would not be any end-purchasers.

As regards to the existence of an arbitration of the disputes arising from the building contract entered between the defendant and Sato Kogyo Company Limited, it is of no concern of the plaintiff as it is not a privy to the said contract. The defendant itself created the situation with which it is now facing and it cannot in any event blame the plaintiff. I therefore hold that the issue of estoppel must fail - see *V. Veeriah v. General Manager, Keretapi Tanah Melayu* [1974] 1 MLJ 201.

Turning to issue (2), the charge was duly stamped basing on the amount of RM2 million being the limit of the banking facilities granted by the plaintiff to the defendant. The allegation of under-stamping was in relation to the accrued interests and interests that had been capitalised which the defendant failed to pay. The answer to such an allegation can be found in the judgment of Gunn Chit Tuan SCJ who delivered the judgment of the Supreme Court in the case of *United Malayan Banking Corporation Berhad v. Pekeliling Triangle Sdn. Bhd.* [1991] 1 CLJ (Rep) 474 where His Lordship said at p. 483:

> Although it has been provided in the instruments concerned in each of these cases that interest be capitalised, yet as unpaid interest it retains the character of interest and the instruments need not be separately and further stamped under s. 14 of the Act (that is the Stamp Act 1949 (Consolidated and Revised - 1989)). In these cases the principal sums of money lent or the amounts secured were limited to RM8,000,000 and RM150,000 respectively and are distinguishable from the case of the *Re Waterhouse's Policy* where the current account was without limit. It is therefore our judgment that s. 28(1) of the Act is also applicable to these cases so that stamp duty is only chargeable on the original loan amounts.

With regard to issue (3), it is to be noted that the defendant contended that the plaintiff had no right to charge compound interest and its Counsel in his submission elaborated on this issue by arguing that in charging compound interest it amounted to a penalty and violated s. 74 of our Contracts Act 1950. Apparently Counsel cited the wrong section of the 1950 Act; it should be s. 75 of the said Act. In support of his contention he cited two Indian High Court cases namely the case of *Kurella Ramamurti v. Nalam Subbarao* [1939] AIR Madras 481 and *M/s. Jyoti Cold Stores v. P.F. Corporation* [1973] AIR P & H 38. In respect of this issue it is to be noted that in Clauses 4 and 5 of the annexure to the charge the plaintiff is entitled to capitalise interest which is the same as compounding interest. Now in the *Kurella Ramamurti* case Pandrang Row J held that the stipulation in the mortgage deed for payment of compound interest at the rate of 12% per annum was in the nature of a penalty and was not binding on the mortgagor. However the learned Judge did not cite any authority to back up his conclusion. On the other hand in the *M/s. Jyoti Cold Stores* case Gujral J after a careful scrutiny of the provisions of s. 74 of the Indian Contract Act 1872 particularly the explanation stated therein (which is in *pari materia* with s. 75 of our Contracts Act 1950 and the explanation stated therein) and also after a careful review of a number of authorities rejected the appeal of the mortgagor and went on to say at p. 39:

> The above observations are fully attracted to the facts of the present case. Considering the facts of the present case, there is **nothing to show that the increased rate of interest was not intended to be part of the primary contract between the parties.** The enhanced rate of interest is also **not unconscionable or unreasonable** in the circumstances of the case. (Emphasis is mine).

I prefer to accept the approach adopted by Gujral J for obvious reason. In the case before me it is my finding that pursuant to Clauses 4 and 5 of the charge annexure the capitalisation of interest was intended to be part of the contract creating the charge between the parties.

Considering that the rate of the capitalisation interest is the same as the prescribed rate of interest it cannot be said, to be unconscionable or unreasonable and s. 75 of the Contracts Act 1950 is not applicable. I must therefore also reject issue (3) raised by the defendant.

Under the circumstances judgment is given in favour of the plaintiff and I allow an order in terms of the plaintiff's prayers (1), (2), (3), (4) and (5) as set out in the originating summons. The defendant is also directed to pay the costs of this proceeding.

Also found at [1991] 3 CLJ 2552